

MINUTES
WARRICK COUNTY AREA PLAN COMMISSION
Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, February 13, 2012, 6:00 PM

PLEDGE OF ALLEGIANCE – A moment of silence was held followed by the Pledge of Allegiance

MEMBERS PRESENT: Guy Gentry, President; Mike Moesner, Brad Overton, Marlin Weisheit, Larry Willis and Jeff Valiant.

Also present were Morrie Doll, Attorney, Sherri Rector Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: Amanda Mosiman

MINUTES: Upon a motion made by Larry Willis and seconded by Marlin Weisheit, the Minutes of the last regular meeting held January 9, 2012, were approved as circulated.

ADOPTION OF RULES AND REGULATIONS: Con't from January 9, 2012

Mrs. Rector stated there are no changes that needed to be made and so they can adopt the same Rules as last year.

Brad Overton made a motion to adopt the Rules of Procedure. The motion was seconded by Marlin Weisheit and unanimously carried.

FEE SCHEDULE: Removed Fence ILP charge.

Mrs. Rector stated they are no longer issuing Improvement Location Permits for fences and so they need to approve the amended fee schedule.

Marlin Weisheit made a motion to adopt the fee schedule as amended. The motion was seconded by Mike Moesner and unanimously carried.

The President explained the Rules of Procedure to the audience. He stated this Board will make a recommendation and then forward the rezoning petitions and recommendation to the County Commissioners at their March 12, 2012, meeting.

REZONING PETITIONS:

PC-R-12-01 – Petition of Wild Boar Mining, LLC, by Tom Peck, Operations Superintendent. OWNER: American Land Holdings, LLC of Indiana, Marc Hathhorn, Sr. VP of Operations for the Midwest to rezone 19.669 acres located on the N side of Dickeyville Rd. approximately 450' E of the intersection formed by Dickeyville Rd.(N 850) & Eby Rd.(W 100), Hart Twp. from "A" Agriculture and "CON"

Recreation and Conservancy to “M-2” General Industrial zoning district with a Use and Development Commitment. *(Complete legal on file.)* Advertised in the Boonville Standard February 2, 2012.

Nathan Brownell, Tom Peck and Ken Hagan were present.

The President called for a staff report.

Mrs. Rector stated they have submitted all of the return receipts from certified mail of notice of this petition to the adjacent property owners. She explained this is a request to rezone 19.669 acres from “A” to “M-2”. She said they have a Special Use approval to mine over 7,969 acres and they came in for a permit to build an office and shop onto the existing warehouse. She stated the shop needs to be at least 60 feet tall in order to bring the equipment in for repair; however, the maximum height allowed in an Agriculture zoning is 40 feet and so they are petitioning to rezone this to “M-2” since there are no height restrictions in the industrial zonings and mines are only allowed in “A” “CON” and “M-2”. Mrs. Rector stated there is no minimum lot size for industrial and the Comprehensive Plan has no projections for this area. She stated they are currently mining 7,969 acres and have filed an amended Special Use to include an additional 891 acres. She said all the surrounding property is zoned “A” and “CON” and is either vacant or currently being mined. She added there is no flood plain on the property and the site has an existing entrance off Dickeyville Road. She added they have submitted a Use and Development Commitment with this rezoning stating: *The real estate will be used for support functions of the adjacent Wild Boar surface coal mine. These functions include mine management, office, maintenance and repair shop, employee parking, parts and supplies storage and other mining support functions.* She said it further limits the development requirements as: *The use of the real estate will be limited to what is necessary for atypical surface coal mining operation. The use and activities will only support the Wild Boar mining operation and will not involve any other commercial or retail activities.* Mrs. Rector stated the application is in order.

The petitioners had nothing to add.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Mike Moesner made a motion to recommend approval of PC-R-12-01 to the County Commissioners. The motion was seconded by Larry Willis and unanimously carried.

The petitioners were informed this would be forwarded to the County Commissioners with a recommendation of approval on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

PC-R-12-02 – Petition of American Legion, Tennyson Post 463, by Mike Broshears, Financial Officer to rezone 3.75 acres located on the E side of SR 161 approximately 500’ S of the intersection formed by 3rd Street and SR 161, Tennyson, Indiana, from “R-1A” One Family Dwelling to “A” Agriculture zoning district. *(Complete legal on file.)* Advertised in the Boonville Standard February 2, 2012.

Mike Broshears and Bill Bivins, ACCU Survey were present.

The President called for a staff report.

Mrs. Rector stated they have submitted all of the return receipts from notice of this meeting to the adjacent property owners. She said they are requesting to rezone 3.75 acres from "R-1A" to Agriculture. She added that Agriculture zoning requires a minimum of ½ acre if on sewer and 100' frontage at the building line and the Comprehensive Plan shows the town to be moderate to high density residential and has no projections around the outside. She stated this property directly north and east of the property is vacant Agriculture; to the south is some "R-1A" and Agriculture and to the west is "R-1A" with residences. Mrs. Rector stated this property was annexed by the Town of Tennyson a few years ago and the Comprehensive Zoning Ordinance says that any Agriculture and CON zoned property annexed into a corporate boundary shall become zoned "*R-1A*" until otherwise zoned or classified as to a zoning district. *The zoning classification of all other areas annexed shall remain the same.* She said whenever they annexed the American Legion into Tennyson the annexation ordinance didn't specify the area should remain Agriculture or become commercial and so it became residential and so they are requesting this property be rezoned in order for them to be in compliance for their club. She added they came before this Board last month for direction and were told the cleanest way to solve this was to rezone their property and they have also filed a Special Use with the BZA to have their club and spot shoots. Mrs. Rector said they also want to add on handicapped restrooms to the facility. She commented the entire property lies in a Zone A Flood Plain and it has existing entrance of SR 161. She said the stated use is the American Legion which is allowed in the proposed zoning. Mrs. Rector explained this property lies within the Town Limits of Tennyson and the rezoning will need to be approved by the Town Board. She said their next meeting of the Board is Tuesday, March 6, 2012, at 5:30 p.m. in the Town Hall. She added a copy of the application and a letter explaining it has been sent to the Town Board and the Board replied by a letter saying *The Town of Tennyson is in support of the Tennyson American Legion in their efforts to obtain their special use permits and rezoning. We encourage them to strive and prosper to their fullest abilities and believe this will assist them in achieving this. Their success is not only a benefit to them but encourages community awareness and involvement for the residents in our Town.* She stated the application is in order.

The petitioner had nothing to add.

Ascertaining there were no comments from the Board, the President called for remonstrators.

Eric and Debbie Stahl approached the podium.

Mr. Stahl stated they own the property surrounding the Legion on the north, west and south sides. He said the men have done a fine job getting the Legion up and running again. He said they don't understand why it would be zoned as Agriculture. He said he thinks it should have been zoned commercial. He said if you read the definition of Agriculture off the website it doesn't say anything on there that applies to the Legion. He said they would like for it to be zoned correctly to begin with so they don't have to come back and do all of this again.

Guy Gentry stated they looked through the Zoning Ordinance for clubs and felt this was the best category for it and they directed them to go for this.

Mrs. Rector stated it is a Special Use requirement under that zoning classification so first they have to get their zoning and then they get the Special Use. She stated this certainly limits it to a lot less uses than if they would go commercial. She stated he is a lot more protected in an Agriculture zoning that he would be if they went commercial.

Mr. Stahl stated they just felt like it wasn't being zoned correctly.

Mrs. Rector stated it was the direction of this Board that they file for this zoning and so they won't be having them come back to file for a commercial zoning.

Ascertaining there were no other remonstrators present and being no questions from the Board the President called for a motion.

Larry Willis made a motion to recommend approval of PC-R-12-02 to the Town of Tennyson. The motion was seconded by Marlin Weisheit and unanimously carried.

The President stated this petition will be forwarded to the Town of Tennyson with a recommendation of approval at their March 6, 2012 at 5:30 p.m.

PC-R-12-03 – Petition of Lee W. & Donna Wirthwein to rezone 5.80 acres located on the E side of Yankeetown Rd. approximately 750' N of the intersection formed by Yankeetown Rd. (W 200) & Eble Rd. (S 550), Anderson Twp., from "A" Agriculture and "CON" Recreation and Conservancy to "C-4" General Commercial zoning district with a Use and Development Commitment. *(Complete legal on file.) Advertised in the Boonville Standard February 2, 2012.*

Lee & Donna Wirthwein and Attorney, Les Shively were present.
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Mrs. Rector stated they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She stated this is a request to rezone 5.8 acres from Agriculture to "C-4" General Commercial and added there is no minimum yard requirement for commercial zoning. She stated the Comprehensive Plan has no projection for this area and currently the Wirthwein's have a residence on this property and an unattached accessory building he is using for his excavating business. Mrs. Rector said the surrounding property is zoned "A" & "CON" being large parcels with residences. The lot directly south is owned by the petitioner and is vacant. She further stated that Mr. Wirthwein attempted to rezone his property in 1997 for his excavating business and the occasional sale of firearms; however, that petition was denied. She said he telephoned the office in January asking what would be required for him to legally have gun sales in a portion of his unattached accessory building. Mrs. Rector stated he came in for a site review meeting and was told he needed to bring his property into compliance and could file for a home workshop with the BZA for the L & M Excavating and not sell firearms or he would need to rezone his property to "C-4" to be able to have the firearms sales and his excavating business. She said there is no flood plain on the property and at the site review meeting the County Engineer told him he may have to asphalt his driveway but he could petition the Commissioners to waive the driveway requirements. She said the stated use on the petition is for gun sales and building contractors shop which is allowed. She added they have submitted a Use and Development Commitment to accompany this rezoning which limits the use to *Excavating Company (offices & equipment) and sales of firearms and related accessories*, and it limits the development to *those regulations set forth in the Warrick County Zoning Code with no other employees other than immediate family members*. She stated the application is in order.

Attorney Shively stated back in 1997 when Mr. Wirthwein made his first rezoning request they didn't have in the ordinance for the Use and Development procedure. He said having met with staff and trying to clean this situation up they have entered into a Use and Development which will put severe limitations as to what can be put on that property commercially. He stated only family members can work there and only these two uses. He said they also have eight consents from adjacent land owners they would like to present to the Board. (copies on file)

Larry Willis asked if they will be discharging any firearms when he sells them.

Mr. Wirthwein answered no.

Mike Moesner asked if he will also sell ammunition or strictly the firearms.

Mr. Wirthwein commented that would depend on if they can make any money selling ammunition because Walmart is pretty good.

Ascertaining there were no other questions from the Board and being no remonstrators present, the President called for a motion.

Marlin Weisheit made a motion to recommend approval of PC-R-12-03 to the County Commissioners. The motion was seconded by Brad Overton and unanimously carried.

The petitioners were informed this would be forwarded to the County Commissioners with a recommendation of approval on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

The President stated the next three petitions are all near each other.

PC-R-12-04 – Petition of Kirby Broadview Farms, Inc, by James W. Kirby, President to rezone 39.70 acres located on the S side of Millersburgh Rd. approximately 0' E of the intersection formed by Millersburgh Rd. (N 250) & Eskew Rd. (W 300), Boon Twp. from "A" Agriculture to "M-1" Light Industrial zoning district. *(Complete legal on file.) Advertised in the Boonville Standard February 2, 2012.*

Bill Bivins, ACCU Survey and James Kirby were present.

The President called for a staff report.

Mrs. Rector stated they have three applications on file and they sent the notices for all three applications in one mailing. She said they have all the return receipts except for James & Thelma Harris; Stone Trust; and Jennifer & John Baker but they do have the white pay receipt. She said this is a request to rezone 39.70 acres from Agriculture to "M-1" Light Industrial and there is no minimum lot area for commercial or industrial. She said the Comprehensive Plan has no projection other than 100 year flood plain and the existing use is farm ground. She stated the property to the north is zoned A & CON with some residences; to the east is Agriculture – sewage treatment plant and some C-4 in the SE corner that is farm ground; to the south and west for over 1,000' is vacant Agriculture owned by Mr. Kirby. She said the property directly west is on the agenda this evening for a rezoning to "R-1A" and further to the south along SR 62 is a rezoning petition for "C-4" on property owned by Mr. Kirby. Mrs. Rector stated a portion of the property lies within a Zone AE Flood Plain and if any structures are built within that flood plain area they will need to have a certified plot plan showing the structure is located 2' above the base flood elevation or have the property removed with a letter of map amendment. She said the property fronts on Millersburgh Road and any subdivision/development will require street plans. She said the

stated use on the application says it is for “M-1” Light manufacturing which is allowed in this zoning. She stated the application is in order.

Brad Overton asked what their intentions are for this property.

Mr. Bivins stated they are looking for something light industrial because the new location of the by-pass will be going somewhere through that property and the State has indicated they would give him two commercial entrances off the by-pass and so that makes the land available for light industrial.

Ascertaining there were no other questions from the Board and being no remonstrators present, the President called for a motion.

Marlin Weisheit made a motion to recommend approval to the County Commissioners of PC-R-12-04. The motion was seconded by Larry Willis and unanimously carried.

The petitioners were informed this would be forwarded to the County Commissioners with a recommendation of approval on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

PC-R-12-05 – Petition of Kirby Broadview Farms, Inc., by James W. Kirby, President to rezone 18.82 acres located on the N side of SR 62 approximately 1280’ E of the intersection formed by SR 62 & Eskew Rd. (W 300), Boon Twp. from “A” Agriculture to “C-4” General Commercial zoning district. *(Complete legal on file.) Advertised in the Boonville Standard February 2, 2012.*

Bill Bivins, ACCU Survey and James Kirby were present.

The President called for a staff report.

Mrs. Rector stated the return receipts are the same as the previous petition. She stated this is a request to rezone 18.82 acres from Agriculture to “C-4” General Commercial and there is no minimum lot area for a commercial or industrial zoning. She stated the Comprehensive Plan has no projection bordering commercial and the existing land use is farm ground. She stated the property to the north is A & CON (owned by Kirby); to the east is Agriculture & Con (owned by Kirby) and then C-4 further east that is farm ground; to the south is some C-4 and then across the highway is Agriculture with residences and some “C-3” and west is “C-4” owned by Mr. Kirby. She added a large portion of the property lies within a Zone AE Flood Plain and if any structures are built within that flood plain area they will need to have a certified plot plan showing the structure is located 2’ above the base flood elevation or have the property removed with a letter of map amendment. She stated this parcel fronts on SR 62 and any subdivision/development will require street plans. She commented the stated use for the property is “C-4” uses. She added the property further north of this property is also on the agenda this evening with two petitions – 39.70 acres from A to “M-1” and 48.89 acres from A to “R-1A”. She stated the application is in order.

Bill Bivins stated that the sides to the east and west are “C-4” and they are filling in the gap.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Mike Moesner made a motion to recommend approval to the County Commissioners of PC-R-12-05. The motion was seconded by Larry Willis and unanimously carried.

The petitioners were informed this would be forwarded to the County Commissioners with a recommendation of approval on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

PC-R-12-09 –Petition of Kirby Broadview Farms, Inc, by James W. Kirby, President to rezone 48.89 acres located on the S side of Millersburgh Rd. approximately 0' W of the intersection formed by Millersburgh Rd. (N 250) & Eskew Rd. (W 300), Boon Twp. from "A" Agriculture to "R-1A" One Family Dwelling zoning district. *(Complete legal on file.) Advertised in the Boonville Standard February 2, 2012.*

Bill Bivins, ACCU Survey and James Kirby were present.

The President called for a staff report.

Mrs. Rector stated the return receipts are the same as the two previous petitions. She said this is a request to rezone 48.89 acres from Agriculture to "R-1A" One Family Dwelling. She added the Comprehensive Zoning Ordinance requires a minimum of 9,000 square foot lot with a minimum of 75' at the building line and the Comprehensive Plan shows no projection for this area. She said the property is currently farm ground and the property to the north is A & CON with some residences; to the east is Agriculture – property on the agenda with a request to M-1; to the south for over 1,000 is vacant Agriculture owned by Mr. Kirby. She said the property directly west is zoned Agriculture and owned Aigner Rentals Inc. and then further to the south along SR 62 is a rezoning petition for "C-4" on property owned by Mr. Kirby. She said a very small portion of the property lies within a Zone AE Flood Plain and if any structures are built within that flood plain area they will need to have a certified plot plan showing the structure is located 2' above the base flood elevation or have the property removed with a letter of map amendment. Most of the subject property lies out of the 100 year flood plain. She said the property fronts on Millersburgh Road and any subdivision/development will require street plans. She said the stated use on the application is for residential and the application is in order.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Marlin Weisheit made a motion to recommend approval to the County Commissioners of PC-R-12-09. The motion was seconded by Jeff Valiant and unanimously carried.

The petitioners were informed this would be forwarded to the County Commissioners with a recommendation of approval on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

PC-R-12-06 – Petition of Bell Meadow Real Estate, LLC by Gregory Moore, Member OWNER: Trustee of the Frederick F. Martin Revocable Trust of 2004 U/T/A dated 05/13/2004, Frederick F. Martin, Trustee, to rezone 15.80 acres located approximately 1300' E of Bell Rd. (W 850) and approximately 1300' S of Vann Rd. (S 350), Ohio Twp, from "A" Agriculture to PUD consisting of "R-2B" Apartment

zoning district with a Development Plan. *(Complete legal on file.) Advertised in the Boonville Standard February 2, 2012.*

Fred Martin, Greg Moore and Jim Morley, Jr., Morley and Associates were present.

The President called for a staff report.

Mrs. Rector stated they have submitted all of the return receipts from certified mail of notice of this meeting to all the adjacent property owners. She stated this is a request to rezone 15.80 acres from "A" to "PUD" consisting of "R-2B" Apartment zoning. She stated the "R-2B" requires 6,000 square feet or 1,500 square feet per dwelling unit whichever is the greatest and it also requires 60' frontage at the building line unless it is a PUD and then that is relaxed. She stated the Comprehensive Plan projects the area here to be commercial bordering high density residential. She said the property is currently vacant agriculture. Mrs. Rector stated the property to the north is part of the subject property and zoned Agriculture (proposed R-1A"); across Vann Road is vacant Agriculture and also "R-1A" Kingston Manor; east is "R-2B" – Springston Canterbury Green and SE corner is Park Place Phase 1 Subdivision; south is Agriculture with residence and beyond that parcel is "C-4" High Pointe Center North Subdivision; west is part of subject property zoned Agriculture and being petitioned to rezone "C-2" and across Bell Road is "C-4", "R-2B" (proposed Pebble Creek Subdivision) and a small parcel of Agriculture being a church. She added this property was attempted to be rezoned to "C-4" in 2008 but they withdrew the application. She further added there is no flood plain on the property and the entire property has frontage on Bell Road and Vann Road but they are showing an access street coming off Bell Road with a private driveway into the apartment complex. She said the stated use is residential housing which is permitted in the proposed zoning. She then added they have submitted a Development Plan showing the approximate locations of the apartment buildings as well as a rendering of the style of building they are considering. She said the Development Plan states that some changes may occur during the final design of the building and they are proposing to construct 9 buildings with 26 units in each building for a total of 234 units. She added they are also proposing to construct a club house, pool and playground. She commented the notes on the plan state that the trees along the property line shall remain in place as their perimeter treatment and that all the parking areas shall be paved and the lawn areas grassed. She said if this zoning is approved, they will need to file a primary plat that will conform to the Development Plan and they will also have to file street and drainage plans with that plat. She further added the office has received 15 emails remonstrating against the rezoning and they are included in their packets for them to read. She said they are generally against the apartments and voice concerns about the traffic and flooding and only want single family dwellings or condos.

Jim Morley, Jr. passed out some exhibits to the Board depicting an apartment complex similar to the one they plan. (copies on file) He stated this piece of property creates a unique circumstance; it is at a crossroads there at Vann and Bell Road and it is bordered by a different type of zoning on each side. He said as they looked at this piece of property they tried to come up with a plan in which they matched the zoning as best they could to each of the property lines. He said to the east there is multi-family zoning and so they have multi-family zoning planned on the east; on the north there is single family and agriculture and on their plan they have single family and to the west there is a heavy commercial and an apartment zoning and because it is difficult to split they went with a lower density commercial to split the difference. He said to the south of them is agriculture and then "C-4" zoning so they are bordering it with multi-family and low density/low impact commercial. He said what they attempted to do was phase from a higher density zoning to a lower density zoning as they went from north to south and to phase from an existing multi-family on the east to an existing heavy commercial on the west. He said the layout is an attempt to try to create a blended development in which they don't put something that is out of line on any property line or at least to the best of they could. Mr. Morley explained the handouts to the Board. He

said because the other two zonings aren't PUD's they don't require a plat or a layout at this time but they thought it would be helpful to cast a vision of what it could look like. He said right now though they are talking about the apartment project and that is the layout of the apartment projects as proposed in the Development Plan. He said on the second page of the Development Plan they have in front of them they will see the rendering of the proposed building and some floor plans and elevations views. He said what he passed out to everyone are photos of a project called Integra Springs in North Carolina. Mr. Morley said that project was designed by Entasis Architecture out of North Carolina and that is the architect that is doing the design of the buildings. He said it is the intent of the developer to match this project to the one being designed or themed after. Mr. Morley said they use a combination of brick and hardy plank siding and stuff on their buildings and it hasn't been determined if the buildings will look exactly like those buildings or not but the intent is they will be similar and they will be very high end apartments – higher end than what Newburgh has now.

Mr. Morley said all of the buildings have garages attached to them on the first floor which is something he is unaware of any other apartment complex in Newburgh having and so the intent is to bring to Newburgh a very high end apartment complex that will be filling a void. He said he did go through and check and they did have a meeting with the neighbors last week and he took notes and wants to address some of their concerns. He said some of the people at that meeting are here this evening. He said they did have some good feedback and he talked to a couple of them who said they thought the plan was fine and looked good. He said then there were others who were at the other end of the spectrum and didn't like the plan. He said from the concerns they heard there were concerns about the drainage for this project and if they will note on the colored exhibit, they have three retention basins laid out on the development plan. He said anything that happens on this entire piece of property has to go through the Warrick County Drainage Board and that will be a public hearing and everyone who has concerns about drainage will have the opportunity to come forward and state their concerns. Mr. Morley stated the plans will have to be filed with the Drainage Board and retention is part of that. He then said there was some concern about the traffic that would be generated from this corner and he can about guarantee that the Warrick County Engineer's Office will request a traffic impact study to see if there need to be any road improvements to require to either Vann Road or Bell Road. He said they will have to do that and then the developer will have to make the improvements to those roads. He said the traffic study would be reviewed and approved by the Warrick County Engineer and reviewed and improved by the Evansville MPO before it could ever be passed in part of the road plans. He said those road plans have to be approved before any plat could be approved. He said all of that would also come to a public meeting in which the adjoining property owners would be notified.

Mr. Morley stated according the Ohio Township Thoroughfare Plan both Vann Road and Bell Road are listed as rural major collectors and that is the type of road you would dump a project like this on to. He said as they can see from the pictures they passed out to them, it is the desire of the developer to create a very high end apartment project. He said the financing for the project is based off those designs and that is the intent of the developer. Mr. Morley stated he thinks they can see it is a very nice project.

Mr. Morley said for the zoning for this project they tried to use this forty acre parcel to merge from one type of zoning to the next and they tried to do that in every direction they could. He said when it changes on all four sides it makes it a bit of a challenge but they feel like they have done a pretty decent job of that. He said the Ohio Township Land Use Map has this listed as moderate to high density residential and they feel like they are in compliance with the Ohio Township Land Use Map and they feel like this is a nice project. He said the construction cost of the project is scheduled to exceed \$25 million which will bring a lot of nice construction jobs to the area. He said there will be some jobs created by the apartment complex itself, not to mention the significant increase the assessed value of the property which will increase the tax revenue for the County. He said they feel this is a nice project and they ask for their approval or recommendation.

The President called for questions from the Board.

Jeff Valiant asked how many units there will be.

Mr. Morley stated there will be nine buildings with 26 units per building or 234 units total. He said as they can see from that layout, in truth they could have shoe horned some more on there but it is the desire that this is an upper end project. He said the developer asked that a business model be put together and the firm out of Indianapolis did the research and they suggested nine buildings that are all high end with the unit count and that is what this layout is based off of. He said there is not an attempt to get greedy and try to wedge some more in there; they wanted to follow the business model that was done by the Indianapolis firm that does apartment research on a professional level.

Brad Overton asked if these are going to be marketed toward seniors.

Mr. Morley stated the rents are projected to start at \$950.00 per month and go up and so they are not designated as an over 55 community like some are. He said if you are over 55 you can still live there but it is not designated as such. He said at that price point it sets a standard as far as the quality of the apartment project.

Guy Gentry stated it looks like about 1/3 of the units have three bedrooms.

Mr. Morley agreed and said they tried to layout the project as a large loop and then through the site review process they put a boulevard entrance in and that is to make sure they can get emergency vehicles in there at all times and it also allows school busses to go in and flow through the project properly and so that way there is always access.

Ascertaining there were no other questions from the Board, the President called for remonstrators.

Tod Bischoff, 8165 Covington Ct, said in the Warrick County Area Plan Rezoning instructions there are a list of factors for the relationship of any type of zoning they have to look at. He said it does conform to the Master Plan-it really does- but the disclaimer at the bottom (*Warrick County Land Use Development and Thoroughfare Plan Map*) that states “*Warrick County, the incorporated and unincorporated communities therein, their employees and their authorized agenda (including their consulting engineers) cannot guarantee the accuracy of this drawing. All information contained thereon should be field verified to ensure accuracy. This map is meant for general planning rather than a basis for decisions on the use of specific tracts.*” He said he believes there are some very specific special circumstances. He said for instance, question # 2 asks if it is in harmony with the existing surrounding uses and trends and there they have to strongly disagree with the proposed apartment complex. He said the surrounding area is made up of single dwelling homes with families butting up to the proposed complex of townhouses with about 70% retired people and Park Place with about 90% retired people. He said he and his wife live on Covington Court and with them being 57 years old they bring the average age down to 70 years old. He said the third question is how the heaviest use permitted in the proposed zone will affect the neighborhood. Mr. Bischoff stated he and the neighbors are very disturbed about this. He said they are afraid of the noise coming from the complex – especially in the summertime with more light pollution and large groups of young people cutting through their yards to go to Bob’s Gym or Dairy Queen etc. He said he has relatives and friends in Park Place and they have a problem in the summertime of people knocking on their doors at 2:30 am yelling and screaming. He asked the Board to put themselves in their place at that age and being all alone and he imagines they would also be scared. Mr. Bischoff stated this is a quality of life issue. He said the instructions also talks about utilities and asks if there is an economic need for the proposed use in

this general area. He stated if they want to build a large apartment complex in Newburgh that is fine but there are better places to build it such as behind Wal-Mart or across from there on Libbert Road on that forty acres or there on the thirty some acres on Grimm Road and SR 66 or in Arbor Pointe, all away from residential areas. He said he is an investor and he follows trends and the trend is the baby boomers are getting older and they want less to take care of a good community to live in with nearby shopping and restaurants and health care. Mr. Bischoff said and without all of the congestion. He said if they want congestion they would move down on Green River Road. He said they have the SR 66 area and the new Wellness Trail and they are building it and they should start promoting it. He said of the 2001 Ohio Township demographics showed that the 3,641 occupied apartments and houses only 13% were renters compared to the 29% State average. He said they are a community of homeowners – not renters; lets step back, take a breath and really determine what is best for our community. He said the latest survey from the *Multi-Family Executive* shows that in the fourth quarter of 2011 renewal rates of apartments fell from a high of 65% down to 59.5% and the reason they state is because people are being priced out of apartments and are having just as hard of a time paying \$1,000 per month in rent as they do a mortgage. He said they don't want 3-5 people living in each apartment to share the cost because then you have boyfriends and then girlfriends and more cars and traffic. Mr. Bischoff said what they need to build is something that will establish a stable population and not a here today gone tomorrow type of population. He stated they want to attract people to Newburgh and homes like in Wyntree Villas and Summit Pointe only have two units up for sale right now so there is stability here. He said there are only eight condos available right now in Warrick County and that is what the need is right now – providing housing for baby boomers that want to downsize and they aren't going to go up and down flights of stairs . He said people move to Newburgh for the slower pace of life but it is changing and not for the better, let's not turn Newburgh into the east side of Evansville or North Bell Road into South Bell Road, let's stop it at the four acre woods on the east and the church on the west. He said if they do decide to approve this Mr. Moore said the other night there would be trees and landscaping around these apartments and if it is like the trees and landscaping around the Wal-Mart, forget it. He said there are trees bigger in the ditch than what was planted there. He said if they approve this project they want it on the record that a 6-8 foot white vinyl no maintenance fence must go along the east and south side of the project protecting the residents along Covington Place and Park Place. He said they want the vinyl because wood fences deteriorate and after a while they begin to look bad.

Robert Neber, 3622 Katalla Drive, said he backs everything Mr. Bischoff said but he wants to add a little more emphasis on the water problem. He said he has had a water problem on Katalla Drive since 2005 and he has been coming to this group since then trying to get it straightened out and he hasn't because the water is coming over the retaining ponds. He said the water should be going to Vann Road but it doesn't and he has a little river behind his house. He said if you start talking about holding ponds with these apartments you are going to have the same problem. Mr. Neber said no apartments – he moved over here for the quietness and he does not want to see apartments. He said he isn't against people coming in with single dwellings but this is not an area for apartments.

Mike Klopfenstein said he lives on Vann Road directly across from this proposed project. He said he is going to hit on a couple of other areas. He said at the Wednesday night meeting they

had Mr. Moore pointed out that there has not been any traffic studies done on this project. He said Vann Road traffic right now is becoming increasingly hazardous – if you try to make a left turn off Vann to Hillsboro – good luck. He said it is the same in the other direction and he has waited as long as five minutes for traffic to clear and it is only going to get worse. He said they have already rezoned the west side of Bell Road for apartments and if they add another 234 units on the east side of Bell Road with 400 plus parking spaces he feels the proper sequence would be first determine – do the traffic study – before they zone it for something that is not going to be compatible. He said he thinks it would be a mistake to zone first and then find out it isn't going to work. He said if they zone it “R-2B” for apartments where do they go from there. He said his second concern has to do with the single family residential as conceptual on the north side. He said he realizes this is a concession to the residents of the area to make single family but from a practical standpoint, if they build apartments on the south side, how likely is it that a developer is going to come in and build homes there. He said this developer isn't, his intention is to sell that to a residential builder. He asked what happens in 2 or 3 years if the apartments are there and no one comes in to build the single family, will they be forced to rezone it to something more onerous to the residents there. He said he feels they are moving too fast and they should answer more questions before they go ahead with the zoning.

Charles Gass said he lives on Canterbury Court and if he walks out of his front door he could throw a rock and hit the property they are talking about. He said he and his wife are not against progress but it is the containment of over building and the water and traffic problem and this being backed up against a residential area. He said they have been holding their breath as to what is going to happen- it is true that there are different zonings around but it is kind of like no one really knows what to do with the properties. He said he thinks if it was zoned for single or multi-family dwelling then they would have a solid foundation for some kind of containment to the growth in that area. Mr. Gass said he thinks if they put nine, three story apartment buildings there is no containment. He said he knows they will get their money out of it be they will pay for it by funding the policing and fire and their property values are at a standstill. He said his family moved there nine years ago and now they have the super Wal-Mart and building all around and that one little segregated corner at Bell and Vann has heavy traffic right now. He said he missed the meeting they had last week but to address the concerns and money already invested in this area maybe they should step back and look at another way to develop this area.

Steve Wernicke, 8299 Greencrest Drive said he lives next to the proposed project and he passed out documents to the Board. (copies on file) He said he has lived here since 2004 and his land is adjacent to the proposed rezoning and he has done a little research and finds it significant in his views and he would like to share it with them. He said after evaluating his own experience and others who have had previous dealings with Greg Moore in the past he has come to some conclusions. Mr. Wernicke said several neighbors and he have reasons to believe Greg Moore in the past has misled folks at rezoning petitions. He said in addition, his second conclusion is he thinks that anything that comes out of this they need to have in writing and make sure it is signed by the developer. He said his conclusions are supported by the following facts. He said in 2008 Greg Moore tried to rezone the same property to “C-4” and as they know that is the least restrictive zoning for commercial property. He said the proposed “C-4” rezoning abutted directly against several houses, including his own that are zoned “R-1A” Single Family. He said Greg Moore's proposed rezoning gave no layered approach to zoning between “C-4” and “R-1”. He

said he thinks in hindsight he was trying to sneak one in hoping neighbors would not oppose him, trying to keep all of the resale options available and trying to maximize profit.

Mr. Wernicke said he and his neighbors were alarmed and they united. He said after the initial meeting between Greg Moore and his neighbors he withdrew his petition to rezone. He said he believes Greg Moore would have kept the rezoning petition in place for “C-4” if he did not have very much opposition from the neighbors. He said if they fast forward to the current rezoning petition, after recently receiving another petition to rezone, he decided on his own to look into previous projects that Greg Moore has completed. He said he came across a big problem in Evansville in the past that left many residents of Vanderburgh County feeling misled. He said Greg Moore filed a petition to rezone and build apartments near USI. He said the only real objection was from the West Side Improvement Association and surrounding neighbors. Mr. Wernicke said the main objection was they didn’t want the new apartments marketed for students. He said Greg Moore and his attorney indicated the apartments would be high end apartments and they also wrote letters and testified before the Vanderburgh County Commissioners that student population would be limited to 10%. Mr. Wernicke said therefore, everyone withdrew their objections and it was rezoned. He said to everyone’s surprise during the construction, large signs were put on the buildings and fliers were distributed around the USI campus encouraging students to live at Eagle Village Apartments. He said many Vanderburgh County residents felt misled but they had nothing in writing to go back on.

Mr. Wernicke said the first page of the exhibit he gave them is a copy of a letter from the Vanderburgh County Commissioners to Greg Moore asking for a special meeting to explain the deviation from his proposed plan. He said the pages following that letter are the rezoning minutes from Vanderburgh County. He asked the Board to please read the handout. He then stated that last week several of his neighbors met with Greg Moore and Jim Morley. Mr. Wernicke said that during the meeting he asked how it was possible for a developer to deviate from a plan presented to a rezoning committee. He said Jim Morley responded that he had never had to change an approved plan; Greg Moore offered no comment. He said in conclusion, he is not against developing this land and neither are his neighbors; however, several neighbors and he feel Greg Moore can be misleading and they feel he tried to sneak one in a couple of years ago by trying to rezone the entire property to “C-4” and also he has uncovered some evidence that shows that he has misled folks in Vanderburgh County at a rezoning hearing for Eagle Village Apartments on the west side. He said moving forward, he feels all commitments need to be put in writing with all loop holes covered – proceed with caution. He said his family and his neighbors are all relying on their expertise to maintain safe traffic flow and protect their property values.

Dennis Frye said he also lives on Greencrest Drive but more than two blocks from the proposed development. He said his emailed letter is on record so he won’t repeat that. He said he would just like to point out a practical thing – at \$25 million for about 240 apartments is about \$100,000 per unit and that includes the entire development project. He said he has been in some high end apartments and they cost a whole lot more than \$100,000 a unit to purchase. He said \$900 a month is not a particularly large amount to pay for a so called “high end” apartment complex. He said looking down the road ten years from now – his home will be paid for in a couple of years and they hope to be there for a couple of years longer than that - looking down

the road in ten years and consider the construction price of this piece of property and the large number of units ask yourself what that property will be worth in 10 years and what will those units be renting for. He asked what will that do to the property values to the adjacent homes and that is his concern. He said he applauds the idea to develop that land; that land is good for two things – to grow crops and to grow people. He said if you can do that with nice single family dwellings or high quality condominiums then that would be a good thing. He said his concern has to do with the cost of the development, the eventual decline of the quality of the properties and how that reflects to the property values of the adjacent owners. He said if they collect the Springston, Kingston and Old Hickory Subdivisions and add the total amount of money those homeowners have invested in their homes since their purchase the value would exceed the \$25 million. He said they have a significant investment in their community and they want to keep that investment. He said if Mr. Moore and his group can find a more amicable way to develop that property for people to live on it that would be fine provided they meet all the requirements. Mr. Frye said the practical concern is down the road.

Ellen Kloberdanz, 3500 Katalla Drive, said she doesn't want to repeat anything that has been said tonight but she does want to emphasize the drainage issue and the traffic issue but mainly the drainage issue. She said they have not recovered from the Engelbrecht Orchard incident and now you are going to put hardscape on the other side of them with nine apartment buildings and all of the associated parking spaces. She said retention ponds – she has had her fair share of dealing with retention ponds and they haven't helped her on Katalla Drive in the least bit – it has hurt them. She said she is afraid if they do this and they let them build the apartments and let them put the hardscape in it is just going make her situation even worse because their drainage problem along there runs all the way down Bell and Vann Road. She asked if they have driven down those roads lately-Bell is a very narrow, two lane residential road. She said when you come up Vann Road going toward SR 261 it turns into completely residential and she cannot see putting commercial and 234 apartments in that one spot.

Donna Lakey, 7699 Liberty Court, said she is a board member of the Old Hickory Homeowners Association. She said much of what she has to say has already been said but the reason why she walked up here is to underscore to them how important that is and she wants them to hear all of it. Mrs. Lakey stated everyone here has a very large investment in their home and if they would think about their own home they wouldn't want it de-valued. She said she has lived in Old Hickory for twenty years and when she first moved in Vann Road and Hillsboro Road was a dead end and she wishes it were again. She said her street parallels Hillsboro Road and if she stands in her kitchen window and watch traffic go west to east you know they are not going to stop at that three way stop. She said what are 234 more units going to bring, obviously more traffic and more students. She asked if anyone thought about the influx of students in Castle – it is bursting at the seams now. Mrs. Lakey said they are not opposed to progress and they know that is the way of life and it is what happens in this country but what they are asking is they do their job. She said they are all so very much aware of the financial issues that have followed Mr. Moore and his investors and they don't want a half-finished development there and they don't want it to erode and it end up being government subsidized housing in the future. She said they have a major job cut out for them and they would like to see them step up to the bat and take into consideration everybody in this room and think how it would feel if it were your home.

Ascertaining there were no other remonstrators, the President called for rebuttal.

Jim Morley, Jr. stated he took the best notes he could and he would like to go through the list. He said when Mr. Bischoff came up he understood he said they would be joining multi-family zoning next to single family and to the best of his knowledge it is multi-family zoning to the east and he believes there are duplex units to the east which would be multi-family joining multi-family. He said he also mentioned other locations that are available and several of those locations have already been developed into smaller commercial lots and the majority of all of those locations that he mentioned are in the 100 year flood plain and require substantial amounts of fill which make a project like this unfeasible given the cost they are asking for the property.

Mr. Morley stated there was a question brought up about is there really a demand for this type of project. He said the site feasibility study says there is a need and the developer, to be honest, would be a fool to invest in this if he didn't feel there was a need. He said at the end of the day it will be him and his partners that sign on the line with the bank and the bank won't finance a project if they don't feel like it is a viable project. He said he believes it will be the public in the end that determines whether it is a good idea to build apartments.

Mr. Morley stated Mr. Klopfenstein spoke about the traffic and a couple of folks talked about traffic and again they will have to do a traffic study and no doubt the County Engineer will require that. He said the reason you don't do traffic studies in advance is because they are expensive and the cost implication of doing something like that prior to determining even if the property is rezoned is getting the cart before the horse. He said the fact is if the traffic study comes back whatever it says the developer can do and has to do and that will be in a public meeting with the County Commissioners. He said everyone will have the opportunity to see that traffic study and argue against it in that public meeting.

Mr. Morley said Mr. Wernicke talked about a layered approach for rezoning and that is what they attempted to do. He said they did not go from residential "R-1" to "C-4" zoning, there is no "C-4" on this plan. Mr. Morley stated they attempted to match multi-family to multi-family; commercial to heavy commercial/apartments and single family to single family. He said they feel like this is a layered approach; they looked at several different layouts and to be honest with them he couldn't come up with a better one to phase from one type of zoning into the other type of zoning. He said several folks talked about this would be a great place for single family homes but in truth that would be an odd zoning because you would be putting single family homes between multi-family zoning and commercial zoning. He stated the multi-family zoning is what fits in this piece; it is what it is surrounded by except to the north and they have put single family there to tie into the existing zoning and that comes up later.

Mr. Morley said a couple of folks mentioned condominiums. He said he isn't a banker but he did speak to a banker about condominiums and he said condominiums are more of a challenge to get financing for. He said he does have a client who does have a condominium project in Newburgh and they currently aren't building any because they are having a hard time selling them. He said that is most likely because of the financing challenge. He said it is his understanding the mortgages look a little different between a condo and a house and not all banks will lend on a condominium.

Mr. Morley stated they brought up about drainage. He said he thinks this project is downstream from everyone that came up here to speak. He said all of that drains into this so the improvements made here, in addition to the retention basins that will be put in, should not have any negative effect on drainage upstream. He said again, that drainage study will have to be reviewed and approved by the Warrick County Surveyor's Office and Drainage Board. He said that will also be a public meeting and notices will be sent to them and the public will have the opportunity to review the drainage study. He said they did have someone state that \$900 a month for an apartment and \$100,000 a unit was not much money but it is a lot of money to him. He said he feels that dollar value sets a pretty high precedence as to the quality of the product that is going to be built. He said they passed out pictures in the beginning of what the project is modeled after. He said several folks were concerned about what this project ... he guesses the question is, are they going to get what they vote for tonight. He said Mr. Moore has agreed that he is willing to put in writing and have it tied to the zoning that the project will be similar to what has been passed out here tonight. Mr. Morley said that could be attached to the rezoning and made a part of it if that is legal but he is willing to make it part of the petition. He said in closing they feel like this is a good project, it does a good job of blending between zonings and it has the layered approach that a lot of folks talked about. He said they feel like this is a good project and asked for their recommendation.

Guy Gentry said something was brought up about the fencing. He said nothing is shown on the Development Plan and they talked about there is some existing tree lines. He asked if that is something that could be considered.

Greg Moore stated he has no problems with that. He said once they get into construction and see how many trees are out there and how they look from the units, they will put up fencing. He said they don't want to see the neighbors and they don't want to see us and they respect that. He said going back to the rezoning they attempted 2-3 years ago on that property once they came out and said they didn't want it they stepped back and said it isn't time for it and they withdrew the application. He said now it is time for it. He said the price on this ground – it is not going to be a corn field forever. He said what is going to end up there is not going to be single family. He said Jim Morley came up with a great layout where it transitions both ways from multi-family to commercial and single family and you can't get a better plan whether they believe it or not. He said another gentleman said \$102-\$105 per square foot isn't a lot but that is more than any of those houses cost to build. He said he has been a home builder and \$105/square foot is a lot. He said this is 100% up class.

Jim Morley, Jr. said again if it makes a difference Mr. Moore is willing to make it a part of the rezoning request a commitment that it be similar to as it states on the Development Plan; it is already stated on the Development Plan but to reiterate that.

The President asked for the Board's wishes.

Dennis Frye asked if could speak again before they voted. He said he was out of state when his wife called about a notice about this meeting in the mailbox. He said he was not aware of the previous meeting and he would say the significant percentage of the people living in those

subdivisions have no idea about this meeting. He said personally he will be out of the country at the next meeting and it would have been very easy for him to have not known about this meeting. He said he thinks this is not a good representation of the community and percentage wise he thinks it is a very good representation of how they all feel in the neighborhood about the project but he thinks its not a good representation percentage wise of the community and he wanted to say that for the record.

The President called for further questions from the Board and if not would entertain a motion.

Brad Overton said he would first like to make a comment. He said the one thing he would like to say is this is truly one of the reasons why he got involved in politics is just seeing people take an active role in things and whether they say this is an accurate representation or not this is the most they have seen in this room in his three plus years on the Council and the Plan Commission so he would like to thank everyone. He said this provides them what this country is based upon – to have input where they don't just – things just happen. He said so he would like to thank everybody for coming out and actually just taking a role because to him, that is what he likes to see and that is the great thing about this country, and about this community so he would just like to thank everyone for showing up.

Brad Overton made a motion to deny the request. The motion was seconded by Jeff Valiant.

The President called for discussion and then a vote.

Mrs. Rector asked Attorney Doll if the motion has to be in the affirmative and then vote it down.

Attorney Doll stated not necessarily. He said they do have to state the grounds because they have the rights to appeal this.

Guy Gentry asked if it has to be stated; it was his understanding it has to be done in writing within ten days.

Attorney Doll stated that is true but unless it is stated in a public meeting he doesn't know how it can be done in writing within ten days so if they are making a motion and seconding it he thinks they have to state the reasons why that is your motion.

Brad Overton said his reason why is in his opinion there is a public consensus and the public – as far as he can see, especially from this meeting - does not feel this fits into the neighborhood and does not feel that this is going to maintain or increase their quality of life and those are his reasons and hopefully they are specific enough. He said he is just trying to follow the wishes of the people.

The President called for a motion. Guy Gentry, Mike Moesner, Brad Overton and Jeff Valiant voted for the motion to deny. Larry Willis and Marlin Weisheit abstained.

Marlin Weisheit stated he abstained because he knows Mr. Moore has an investment here and everything else is developed down there so that is his reason for abstaining. He said it is time to

develop that property; it is getting developed all around it and maybe they can come up with a plan that everyone can accept but that is his reason for abstaining.

The President stated there are four votes for disapproval, no nays against it and two abstentions.

Jim Morley, Jr. asked if it would be appropriate for them to try to have another meeting with the neighbors before they finish this out.

Guy Gentry suggested they have another meeting with the neighbors before it comes to the March 12th meeting because this Board has already voted.

The petitioners were informed this would be forwarded to the County Commissioners with a recommendation of denial on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

Guy Gentry stated the Commissioners are not bound by this recommendation whatsoever, it is merely a recommendation of this Board and they are under no obligation to follow that whatsoever.

PC-R-12-07 - Petition of Bell Meadow Real Estate, LLC by Gregory Moore, Member OWNER: Frederick F. Martin and the Trustee of the Frederick F. Martin Revocable Trust of 2004 U/T/A dated 05/13/2004, Frederick F. Martin, Trustee, to rezone (**Tract 1**) 7.85 acres located on the S side of Vann Rd. approximately 920' E of the intersection formed by Vann Rd. (S 350) & Bell Rd. (W 850) from "A" Agriculture to "R-1" One Family Dwelling zoning district and (**Tract 2**) 12.00 acres located on the E side of Bell Rd. approximately 700' S of the intersection formed by Bell Rd. (W 850) & Vann Rd. (S 350) from "A" Agriculture to "C-2" Community Commercial zoning district. Ohio Twp. (*Complete legals on file.*) *Advertised in the Boonville Standard February 2, 2012.*

Fred Martin, Greg Moore and Jim Morley, Jr., Morley and Associates were present.

The President called for a staff report.

Mrs. Rector stated they have all the green cards from certified mail of notice of this meeting. She said the notice sent by certified mail had a staff error saying the proposed zoning for Tract 2 was "C-4" General Commercial and the office sent out a letter explaining the error with a new notice. She said this mailing was done within the 21 day mailing requirement as well. She said the applicant decided to ask for two zonings on one petition so therefore if one is denied, they both are denied. She said this is a request to rezone (TRACT 1) 7.85 acres from "A" to "R-1" One Family Dwelling and to rezone (TRACT 2) 12.00 acres from "A" to "C-2" Community Commercial. She explained that the "R-1" requires a minimum lot area of 6,000 square feet and a minimum of 60' frontage at the building line. She said there are no minimums for commercial zoning. Mrs. Rector stated the Comprehensive Plan projects the area here to be high density residential bordering commercial and the property is currently vacant. She said the property to

north across Vann Road is vacant Agriculture and also “R-1A” Kingston Manor; east of (tract 1) is “R-2B” – Springston Canterbury Green; south of (tract 1) is Agriculture (being the PUD zoning request); west is part zoned Agriculture and across Bell Road is “C-4”, “R-2B” (proposed Pebble Creek Subdivision) and a small parcel of Agriculture being a church. She said there is no flood plain on this property and Tract 1 fronts Vann Road and Tract 2 fronts Bell Road. She said the interior streets will need to be designed for the subdivision. She said their stated use is proposed residential and commercial use and that is allowed in the zonings and the plot plan shows the two different areas. She said the application is in order.

Jim Morley, Jr. stated the majority of what they heard on the last rezoning petition he would say is applicable on this rezoning petition. He said they felt it was being a good steward, as this entire piece of property is up for sale, to go ahead and show the vision and the plan of what the remnant of the property will be – how it will be developed and so therefore that is why they filed on this piece of property. He said there is not an immediate development plan for the commercial or single family home sections but they felt like that was the appropriate zoning and so therefore that is how they filed it. He said they felt like it provided the layered zoning effect that some of the folks were looking for and would ask for their approval.

The President called for questions from the Board.

Guy Gentry stated his question is obviously they are not dead in the water, this is going on the Commissioners in what they just talked about but with the concerns that have been raised does that effect what they want to do now; obviously they are willing to proceed with this project.

Greg Moore stated this all goes hand in hand so if they are going to the Commissioners next month (for apartments) then let’s go to the Commissioners next month with this too.

Ascertaining there were no other comments from the Board, the President called for remonstrators.

Tod Bischoff said the other day he was up in the Area Plan Commission Office and was looking at the plat map for the property across the street and it does show it residential even though it is rezoned “R-2B” but the plat map so far shows they are putting in a residential subdivision across from Bell Road. He said they are not excited at all about having a Seven-11 at the corner of Vann Road or along that area. He said they still believe that the whole area could be developed as residential. He said he is a property owner of some acreage in Newburgh too at times and he has looked at the price of what property has sold for on a lot of subdivisions. He said for what they are asking for the property, he believes it could be developed as a subdivision. He said prices are down right now but they are totally against any type of commercial along that area and as the gentleman said before, if you are putting in an apartment complex nobody in their right mind will build a house there surrounded by an apartment complex, Seven-11 and/or Burger King, he wouldn’t.

Guy Gentry stated for clarification, this does not go all the way up to Vann Road. He said the commercial part is on Bell Road but it doesn't go all the way up to Vann Road.

Mike Klopfenstein said he has no objections to the "R-1" zoning (which is across where he lives) and obviously that is what they would prefer over there. He said he does raise questions and concerns about the "C-2" Commercial on Bell Road back to the traffic issues. He said he still thinks to approve – once it is approved for "C-2" Commercial he guesses that is the go ahead to build and develop and what happens if the traffic study says they have to widen the road to three or four lanes before they can accommodate that or do they sit and wait until the carnage happens and then decide they have to make changes. He said he would proceed cautiously on rezoning until they understand the impact and implications on traffic.

Robert Neber said everything that was said before pertains to this situation here. He said he isn't going to repeat himself but he just wants to be on record that he is against commercialization in this particular area.

Steve Wernicke said they should keep in mind the proposed "C-2" zoning does not comply with Warrick County's Master Plan for rezoning and could adversely affect their property values.

Donna Lakey said everything she said before still stands. She said where they really feel strongly is on the possibility of the commercial zoning. She said again, she wants to remind them they all have a lot of dollars invested in their homes and communities. She said the traffic and anything associated they don't need.

Ascertaining there were no other remonstrators, the President called for rebuttal.

Jim Morley, Jr. said a couple of the same issues were brought up about the traffic and drainage and again a traffic study will need to be done and a drainage report will need to be created and all of those will go to a public hearing. He said the traffic studies that he has been a part of that the County Commissioners have required those improvements as part of the development process and he would expect no different on this project. He said some folks brought up the zoning; the zoning they propose they match existing single family across the street to proposed single family on the north side. He said on the west side there is existing "C-4" and "R-2B" he thinks and they went with a "C-2" zoning which they felt was for lack of better terms, a meet in the middle between the two existing zonings on the west and so they feel like these zonings are appropriate for the area and for what is across the street from them. He said they feel like they work well with the overall development plan they have propose and ask for a positive recommendation.

Ascertaining there were no questions from the Board the President called for a motion.

Brad Overton made a motion to recommend denial of this petition based upon the consensus of the first comments he made earlier plus the commercial rezoning. He said he can strongly understand what the people of Newburgh and this area – he thinks a lot of people have moved from Vanderburgh County perhaps into Newburgh and it is a great place to be. He said the schools are good here; he works in the School Corporation and he can attest to that. He said he thinks really if they are not careful they are going to just keep moving this County further and further and they are going to just almost become an extension of Evansville and unfortunately in some aspects they may have already done so. He said that is why he is going to vote to deny this one as well.

The President called for a second.

Mike Moesner seconded the motion.

The President called for a vote. Mike Moesner, Brad Overton and Jeff Valiant voted for the motion to deny. Guy Gentry voted against the motion and Larry Willis and Marlin Weisheit abstained.

The President stated they have three votes for the motion, one vote against the motion and two abstentions, therefore the motion to deny did not carry.

The petitioners were informed this would be forwarded to the County Commissioners with no recommendation on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

PC-R-12-08 – Petition of Bryan Scott & Deborah Gebhardt to rezone 1.43 acres located on the S side of Long Rd approximately 600' W of the intersection of Long Rd. & Yankeetown Rd. (W 200), Boon Twp, from “A” Agriculture and CON Recreation and Conservancy to “C-1” Neighborhood Commercial zoning district, with a Use and Development Commitment. (Part of Lot 2 Victoria Subdivision). *Complete legal on file. Advertised in the Boonville Standard February 2, 2012.*

Bryan Scott Gebhardt and Deborah Gebhardt were present.

The President called for a staff report.

Mrs. Rector stated they have submitted the return receipts from certified mail of notice of this meeting to the adjacent property owners. She stated this is a request to rezone 1.43 acres – part of lot 2 Victoria Subdivision to “C-1” Neighborhood Commercial. She said this is no minimum lot area for commercial zoning and the Comprehensive Plan has no projection. Mrs. Rector stated the Gebhardts live on the property and have a residence and unattached accessory building. She added that both buildings fall in the area being rezoned. She stated all surrounding property is zoned Agriculture and CON with sparse residences. She further added Mr. Gebhardt

originally filed a Special Use for a home occupation to order and sell firearms from his residence. She said after discussion with Attorney Doll and the ATF, it was found that the requirements of the ATF would not fall under a home occupation; therefore, Mr. Gebhardt was refunded his money for the Special Use and filed this rezoning petition. She said Mr. Gebhardt met with the Plat Review Committee and based on what he indicated he wanted to do on his property and the ATF requirements, it was determined he would need the "C-1" Neighborhood Commercial zoning. She said Mr. Gebhardt has also submitted a Use and Development Commitment with this rezoning limiting the use to *use as an office for the purpose of transferring firearms, rifles, shot guns, handgun to persons authorized by ATF, NICS*. She said he further limits the development to *no further development needed to existing structures, no signs or advertisements on property*. She said there is no flood plain on the property and there is an existing driveway. She said the County Engineer stated that as long as they are individual orders then nothing will be required for the driveway and should the business expand to more and should merchandise be stocked for retail sale then they would have to revisit the need for a commercial entrance. She said the stated use is for a home office for procurement of FFL License and transfer of firearms to ATF, NICS authorized persons which will be allowed in that zoning and the application is in order. Mrs. Rector stated what required the commercial zoning is the ATF will not allow you to do a background check on someone and then take the gun to them – it has to be done at his home (office). She said the home occupation does not allow any retail sales or merchandise kept on hand and so he had to go with the commercial zoning and he just did a portion of his property, not the entire piece of property, just to get in a commercial part to have his business and it will not be a store front or anything like that.

Scott Gebhardt said nothing will change on the outside appearance. He said he did look at some minutes for Special Uses but after hearing Mrs. Rector's explanation and staff report he will not bring it up.

Mike Moesner asked to what extent he will have security for protection against people breaking into his home and stealing the firearms.

Mr. Gebhardt stated he has a 24 gun home safe with an electronic lock.

Guy Gentry asked how many guns he will have at one time.

Mr. Gebhardt stated other than his personal guns, at the most maybe 2-3 a month or 20-40 a year.

Mrs. Rector stated he isn't stocking a 100 guns there to sell.

Mr. Gebhardt said the way it will operate will be someone will buy a gun across the internet, say from Cabella's. He said Cabella's will send that gun to him but it will not send it to that person because they don't have a FFL, if they did then it would go directly to them. He said if he has his license then they will send the gun to him and he will contact the person and that person will come to his house and he will run the background check and he passes the check then he gets the gun and leaves.

Ascertaining there were no other questions from the Board, the President called for remonstrators.

Karen Long, 5911 Sharon Road, handed out a copy of her statement to the Board. (Copy on file) She stated she owns adjoining property and she is responsible for the maintenance of Long Road. She said she wanted them to refer to the restrictions for Victoria Subdivision item 1 which says *all lots and building plots in said subdivision shall be known, described and used as residential lots*. She said item 7 says *no noxious or offensive activity shall be carried on upon any lot in this subdivision or upon any part thereof, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. There shall not be conducted on or from any lot or building within the subdivision any type of business which shall be offensive, noxious or detrimental to the use or value of any other lot or structure in the vicinity thereof*.

Ms. Long said she is concerned because she did receive a notice of public hearing that was coming before the Board of Zoning Appeals on January 23, 2012 and she came to that meeting and was then told that the Gebhardt's had withdrawn that issue. She stated the notice of public hearing from that hearing stated in black and white "no retail sales on the premises". She said then she received the notice for tonight and that notice she received clearly states his desire to sell firearms to his business customers; hence retail sales. She said she is confused about his conflicting statements, one says he is not going to sell, no retail sales and then he turns around and says yes he is going to sell to business customers. Ms. Long stated her major concern is for the residents and property owners of Victoria Subdivision and the maintenance of Long Road. She said Mr. Gebhardt states that traffic will be FEDEX, UPS, US Mail and other authorized courier services and individuals invited to the property and he anticipates 40 transactions a year in addition to the delivery of the goods and that amounts to maybe 80 vehicles in and out plus the delivery trucks which will be heavy trucks. She said this road is maintained for the use of the tax paying Victoria Subdivision residents and their personal guests and vehicles needed for the continuing maintenance of their homes. She said this road cannot support the additional vehicle traffic.

Ms. Long stated she met with a certified appraiser with David Matthews and Associates in Evansville and discussed how the property values would probably decrease. She said she doesn't know who all got notice for this meeting but she spoke to an adjoining property owner and he doesn't want to be involved even with her discussing the property values.

She said a further concern is if a customer wants to test fire a gun where will they do that. She said she test drives a car and other things and so why won't people want to test fire their guns. She said she understands Mr. Gebhardt is 100% disabled and she only assumes he receives disability payments. She understands he can walk and drive a vehicle and he needs to find a

location in an established commercial location for his business. She said she strongly and firmly objects to a home business in this residential subdivision and she financially cannot afford it.

Mrs. Rector told Mrs. Long the private restrictions she gave to the Board are not signed or recorded. She asked if they have ever been.

Mrs. Long stated they have but these are the ones she had available.

Mrs. Rector stated for the record, she is saying she has to maintain the roadway. She said the reason why she has to is because the subdivision was developed by Mr. and Mrs. Long and they never built the road to County standards and got it accepted. She said at that time the Commissioners didn't require Letters of Credit to be held so because they never built the roads to County standards is the reason why she still has to maintain it; the County never took it over for maintenance. Mrs. Rector stated there is also a moratorium for new residences in that subdivision and if there are any vacant lots, permits can't be issued there and that was placed on the subdivision September 13, 1989.

Mrs. Long said that is all correct.

Mrs. Rector stated she just wants the Board to understand about the maintenance and why the County hasn't taken them over.

Marlin Weisheit asked how many residences are along Long Road. He said he has been back there but it has been awhile.

Mrs. Long stated there are a total of three houses on Long Road. She said if you continue to the back and that becomes Wathan Lane and there is one back there.

Mrs. Rector stated regarding the confusion with notices, she said Mr. Gebhardt was not going to have anyone come his home to receive the guns and that is why it said no retail sales but then in talking to the ATF they said that wouldn't go and so that is why he withdrew the Special Use and filed the rezoning and it now states retail sales basically because he is transferring the gun at that time.

Mrs. Long said so that means all of that additional traffic as she stated before.

Mr. Gebhardt stated he would like to reiterate that in his statement for his business plan in their packets, he does not say that he will be selling anything. He said he will be merely transferring. He said the person will come to him and that firearm will already be purchased either online or through a store. He said the firearm will be sent to his house via UPS, etc. and all he will do is

call the purchaser and when they come to his house he will run the background check and if he passes then hand off the gun. He said he will in no way sell anything to them. He said he will have nothing in stock, it is merely a transfer of the firearm from the original manufacturer to the individual who has prior purchased it.

Guy Gentry asked if there will be any test firing.

Mr. Gebhardt said no there will not.

Larry Willis asked if there will be any transfer of money at the time of transfer of the gun.

Mr. Gebhardt said that will be totally up to him.

Larry Willis said so he is making a sale.

Guy Gentry asked if he is selling a service or a gun.

Mr. Gebhardt said he is selling a service.

Marlin Weisheit said he is just going to have a processing fee. He asked if he has had his firearms license for a while or is this...

Mr. Gebhardt stated he has never had a firearms license and this is part of the process for him to get one.

Marlin Weisheit said there are a lot of people who do this.

Mr. Gebhardt stated it is the same idea in theory as someone who sells Tupperware. He said people sell Tupperware out of their house; someone comes and picks up the order and leaves. He said the sale is already done and he is just saying the people are authorized to take possession.

Larry Willis said so the firearm will already be purchased and the sales tax will have already been paid. He said that is where he was concerned.

Mr. Gebhardt stated that is correct. He said he is just the in between person that make sure the person who has purchased that firearm is legal to have it.

Mrs. Rector said if they read again his Use and Development Commitment and he is limiting himself.

Mr. Gebhardt said he isn't changing anything about his property other than the fact that he will call the person and invite them individually to his house once he has received the product that they had already purchased. He said they will fill out a piece of paper and will call the ATF and they will let him know if they are authorized to have that gun and if they are he gives it to them and then if not then it goes back into his safe and he will return it to the original person/company that sent it to him.

Larry Willis said so the purchaser will get their money back from that other party.

Mr. Gebhardt said that is their business.

Larry Willis said he is the broker.

Mr. Gebhardt said he isn't sure of that term.

Marlin Weisheit said he is aware of several residents in residential areas in Warrick County that have a firearms license. He said he worked in the Sheriff's Office for years and assisted people. He said you have to get fingerprinted and it is just a way have a hobby. He said he has used some of them to transport gun for you.

Mr. Gebhardt said they make sure a legal person is receiving that firearm.

Morrie Doll said just for the education of the new members, Mrs. Long raises the questions about contradictions with the restrictive covenants; this Board has no jurisdiction over restrictive covenants. He said they are private contracts between the developer of the property and the homeowners who bought lots within that property and among the homeowners who purchased lots. He said they have no ability to consider those in their deliberation of this application.

Mr. Gebhardt further stated in one of the restrictions, it does say the owner of Lot 14 would have the major say because they would own 51% of the subdivision. He said that person is no longer Mrs. Long it was transferred and bought by someone else.

Mrs. Long said in the letter she got said his business customers would come by word of mouth and each transaction would be one on one, they would call him to set up an appointment and come to his home business.

Guy Gentry stated his business is background checking.

Mrs. Long said it doesn't quite say that in what she received. She said she doesn't understand what kind of remuneration he would receive; is it out of the goodness of his heart.

Guy Gentry said he would receive payment for the service of the background check but the gun is already paid for.

Mrs. Long said she understands that but her main concern is the road.

Ascertaining there were no other questions from the Board and being no other remonstrators present, the President called for a motion.

Marlin Weisheit made a motion to recommend approval to the County Commissioners of PC-R-12-08. The motion was seconded by Mike Moesner and unanimously carried.

The petitioners were informed this would be forwarded to the County Commissioners with a recommendation of approval on Monday, March 12, 2012, at 4:00 pm, Commissioners Meeting Room, Courthouse, Boonville, Indiana.

PROPOSED ORDINANCE CHANGES:

Building construction (re-construction) after R-O-W taking *Con't from January 9, 2012*

Churches requiring a Special Use & required zoning classifications *Con't from January 9, 2012*

Height of Accessory Building *Con't from January 9, 2012*

Sign Permits: *Con't from January 9, 2012*

- (a) Requiring INDOT permit before issuing off premise billboards
- (b) Semi-trailers as billboards/Political Signage

Definition of Home Occupation

Mrs. Rector asked if they want to discuss these items or continue them until the next meeting.

Guy Gentry asked how long will the discussion take. He then asked two people in the audience if they had something to discuss.

An unidentified person in the audience asked where they could get a copy of the record from this evening.

Mrs. Rector stated the Minutes will be approved at next month's meeting and they will then be available. She said they have to be typed. She then added that they do send a certified rezoning report to the County Commissioners within ten days from the date of the meeting. She said after that they can have a copy of those Minutes as a draft copy.

Guy Gentry said they wouldn't be an approved copy because they don't meet until next month.

Attorney Doll asked if they have an interest in something that transpired here tonight.

The person said they are interested in how everyone voted and also whether or not the Minutes will be a legal document that may be submit able in court.

Attorney Doll said they will be but that is why he asked the question. He said the official Minutes will not be approved until next month's meeting. He said by obvious definition, that is thirty days from now. He said the appeal of any decision by this Board has to be done within thirty days so if they are thinking about it from a judicial point of view, he isn't advocating yes or no, but if they are, they may want to get the rough draft copy of the Minutes to protect their rights within that thirty days.

The person asked if they should just call and ask for them in about 11 or 12 days.

Mrs. Rector said they should and they can email them.

* *

Mrs. Rector stated the only thing she wants to get into is since the election is coming up is the signs on the semi-trailers. She said she also found where back in 2005 this Board ruled they don't issue Improvement Location Permits for any off premise sign (which these would be) until you got the INDOT State approved permit. She said that was dropped as they went along and the permits just say "subject to any State or Federal permit". She said she wants to get this straightened out for herself before election time because she doesn't want to be stuck in the middle of everyone running for office.

Mrs. Rector asked Attorney Doll if they can make a difference between a political sign and any other commercial advertisement.

Attorney Doll stated there have been cases that have argued that political signs are protected speech under the First Amendment, more so protected speech than ordinary speech. He said in Indiana the general rule is they are treated the same as any other sign. He said you can regulate-if communities pass what he calls a "yard mushroom" ban – they are just as equally banned for political signs as they are for business signs.

Mrs. Rector said those signs are exempt.

Attorney Doll said he remembers that but in the case of a semi-trailer as a billboard as a political free speech he doesn't know of any State exemption that gives them more rights or less regulation than a business such as Combs Landscaping.

Mrs. Rector stated so they couldn't add in the ordinance you can have a political semi-trailer sign for sixty day – a temporary political sign.

Attorney Doll said he would think if you said you could have a sixty day sign it would not be just political it would be anybody. He said he is taking the question to be can they exempt political signs from this ban and his answer is no. He commented he was in the Senate when the INDOT regulations for off premise signs was passed and if he recalls correctly that was mandated by the Federal Highway Fund that said INDOT had to approve all off premise signage for Indiana to receive Federal Highway tax dollars for interstate highway systems.

Discussion ensued over on premise allowing temporary signs versus off premise signs.

Mrs. Rector stated the issue they got into with Mr. Kirby a couple of months ago (regarding the political billboard). She said by the time they can do anything about it the time has expired (election is over). Mrs. Rector stated they also need to work on the fines for construction or placement of things without permits. She said she wants to get it straightened out before election time.

Attorney Doll said he isn't sure how to straighten it out unless you are going to permit them and you recommend to the County Commissioners they put through sixty day temporary sign consent. He said but then you could have every small business in Warrick County that chose to do so could have a billboard on a semi in their parking lot for say sixty days.

Mrs. Rector said then the office is going to have to keep track of the time.

Discussion ensued over sixty days per year or every other year and whether they moved it from location to location.

Guy Gentry said there is already a temporary sign permit.

Mrs. Rector said that is on premise signs only and these are off premise signs.

Discussion ensued that the sign on the Kirby property was sitting on commercial property but he refused to get the permit.

Morrie Doll said they could impose a fine.

Mrs. Rector stated it is on the Fee Schedule but Attorney Doll says it needs to go in the ordinance.

Attorney Doll stated all fines or civil penalties should be in the actual ordinance.

Mrs. Rector said the Fee Schedule says a violation fee of \$100 and if an Improvement Location Permit is not acquired the following workday an additional fee of \$100 per day shall be imposed.

Attorney Doll says ARTICLE XXXII Section 4 provides that a civil fine may be levied against any violation of the ordinance for up to \$300 for each day the violation...

Mrs. Rector said the reason why it was placed on the Fee Schedule is because when Attorney Shively was their attorney he told them they didn't put fees in the zoning ordinance you put them on the Fee Schedule so it used to be in the ordinance and it was taken out and put on the schedule.

Guy Gentry said he thinks the logic in that was you changed the fees you didn't have to change the ordinance.

Attorney Doll said he wouldn't disagree but if it is a civil penalty that could be levied for a violation he is advising them it needs to be in the ordinance so the general public has notice of the existence of the fee or, rather, penalty. He said he is differentiating between a fee (paid for filing an application) and a civil penalty for a violation and it needs to be in the ordinance to be enforced.

Mrs. Rector said so she needs to put this in the article where Improvement Location Permits is and put it as a fine.

Attorney Doll said either put it there or ARTICLE XXXII Section 4.

Mrs. Rector asked what the Board wants her to do. She said she sees no need in changing the ordinance for the semi-trailers/billboards.

Attorney Doll commented no need to change it to permit them; does he understand what she is saying.

Mrs. Rector said she doesn't see any need in changing the ordinance as it is. She said what they need to do figure out what to do at election time when people are going to be putting them out and there isn't a time period to do anything about them. She says when she writes them a letter giving them so many days to come in and they come in and say they are moving it in thirty days and don't get a permit and that time comes before the next Board meeting and so...

Attorney Doll stated the only solution is to assess the fine.

Mrs. Rector said it is the property owners that get fined, not the politician.

Guy Gentry asked what the recourse for collection is.

Attorney Doll answered small claims.

Mrs. Rector asked if as a courtesy (because a lot of people don't know) they write a letter to the Democrat and Republican Chairmen of the County to inform them of this regulation so no one goes out and rents one of these things and finds a piece of property and has the expense because she doesn't want to have to start fining people.

Mike Moesner asked in addition what about the people who run for School Board because they aren't party affiliated.

Attorney Doll said if they have several people running in a primary race they may not all be in contact...

Guy Gentry said he knows they are talking about billboards but the exemption are those little yard signs but you get a lot of those 4'x8' signs that people think are those yard signs and they aren't exempt they are over the square footage but they aren't a billboard and asked where they go with those.

Attorney Doll said they could draft a letter or public information announcement and give it to the County Chairmen and the local newspapers and see if they would make a public notice of that fact.

Brad Overton said they could also send one to the School Corporation and have it posted on the Board.

Larry Willis said they could also post it in the Clerk's Office where they sign up for office.

Attorney Doll said another thing to remember is how many sets of zoning laws do they have in the County. He said there are four; the County, Newburgh, Boonville and Chandler and if you are running County wide you have to deal with all of them regarding sign restrictions.

Mrs. Rector said they have not had problems until the Mayoral race and they used the office and filed a complaint as a personal ...

Guy Gentry said they have always had problems.

Mrs. Rector said they did have a problem with Pat Brooks but no one filed a complaint against her from the other party. She said the office told her she had to move it and she did.

Attorney Doll said they can't fix everything and it may be a situation - they are just having conversation here – that they leave it and see if it is a developing problem; if it continues to get worse then they decide to try something. He said if they get the opportunity to tell people that they can't have those that is the best they can do under the circumstances.

Mike Moesner asked what they do in other counties.

Attorney Doll said everyone faces these problems but he will say the semi-trailer billboard signs are a newer phenomenon in political campaigns. He said he also sees them in Vanderburgh County; he even sees them moving down the road.

Brad Overton asked about the signs in the back of a pickup truck that is parked in a parking lot and left.

Guy Gentry said they are public parking lots.

Brad Overton said down at the X-Market they are left all day long and pick it up at night and drive it home.

Mrs. Rector said she thinks Boonville has an ordinance that the signs can be out so many days before the election and they have to be removed so many days after. She said she doesn't know what all they look at and perhaps a parking space you can put whatever is in your truck.

* * *

Mrs. Rector said in regards to the home occupations, she has been looking up definitions from other ordinances and she will bring that to the next meeting. She said she will have a packet together and send it to them so they don't get in any more situations like tonight with the guns.

* * *

Mrs. Rector said in regards to the height of an accessory building for some reason it is 20 feet and she would like permission to just advertise an ordinance to remove that and just have the height restrictions of the zoning govern it. She asked what the normal height of a pole barn is.

Mike Moesner said most farm pole barns have a 16' eve and then it goes up to the peak; probably 25 feet.

Mrs. Rector said if a house can be 40 feet high then the unattached accessory building should be able to be that high.

Mike Moesner said they won't have very many pole buildings that high.

Guy Gentry said they don't build them with the lofts anymore but if they did...

Mrs. Rector asked what would be a good height.

Discussion ensued that it would never get over 40 feet.

Guy Gentry asked could it be worded it not exceed the height of the dwelling.

Mrs. Rector said they could say Standards for Principle and Accessory Buildings on individual lots in the table and take out the not exceeding 20 feet.

It was the consensus of the Board for her to type and advertise the ordinance.

* * *

Attorney Doll stated there is a troubling development in national zoning law in which religious congregations are challenging any regulation of churches under zoning codes. He said they are doing so successfully in several states, most notably in California because in 2000 Congress passed an act called The Federal Religious Land Use and Institutionalized Persons Act. He said in this it forbids any land use control over religious institutions by local government in the United States. He said there is a church in San Francisco who recently won a challenge to a regulation in the local zoning code that prohibited churches in an industrial area. He said the case is on its way back – the Supreme Court let the local decision stand and now the church is seeking monetary damages from the town.

He said his opinion tonight is their ordinance violates the Federal Law. He said first of all they don't allow churches in every zoning district in Warrick County and the ordinance requires churches to be Special Uses and that is an additional handicap or burden they impose upon a function of religion that they don't necessarily impose on some other organizations and that may be a violation of the Federal Law. He said legal scholars opinions are they cannot ban them from certain zonings or require Special Uses, they can't require standard development specifications as they do with any other developer; they can't require parking to be of a certain quantity, they can't require sign placement to be in certain areas, or other standard development tools because

specifically, if it is a church or a structure for institutionalized persons (group home or correctional facility), Federal Law preempts them from using zoning ordinances to regulate those activities.

Mrs. Rector questioned a prison being exempt.

Attorney Doll said he can't speak to the prison because that hasn't gone up on appeal to a court but there are multiple church cases now pending in California, Georgia and Tennessee. He said this bill was authored by Senator Kennedy before he died. He said he wants to make one more point thing out tonight for them to think about. He said they are now seeing in some states individuals who are conducting home bible studies in their residences objecting to prohibitions for parking or other activities, claiming that is also covered under the Religious Land Use Act of 2000. He said they can't prohibit home worship if it is a religious activity on their private property under Federal Law.

Guy Gentry said he would think they would have to be considered a church on the tax rolls in order for that to hold.

Attorney Doll said the problem is what is the definition of a church in the Federal Act and it just says a religious land use, it doesn't say church. He said in certain religions, (i.e. Native American) they actually don't have a church.

Guy Gentry said he is saying they would have to show they are non-profit or whatever status.

Attorney Doll said you would think so but the Federal Law doesn't have such a litmus test. He said if there is some demonstrated fact there is a religious use at that site Federal Law may preempt them from regulating it. He said he is really concerned and he doesn't want them to trip into a situation where they are accused of violating the Federal Law based upon a congregation coming in front of them and wanting a building permit.

Mrs. Rector said she can see them being allowed in any zoning and she can see not having to get a Special Use but she still doesn't get that you can have a big church like Crossroads and you don't have to have so much parking or have a commercial entrance coming into it. She said she can't see not regulating it at all.

Mike Moesner agreed and said those are safety issues.

Attorney Doll said what the Federal Law requires on those "standard" issues is that the burden shifts to us in each individual application to prove that the government has a compelling State interest in enforcing each individual standard to a religious institution that they seek to apply. He

said that means they have to prove the compelling interest that they have 40 parking spaces versus 25 or prove the compelling State interest that the sign has to be 15 feet from the edge of the right of way instead of 10 feet. He said they have had that case in the last twelve months before the Board of Zoning Appeals and it was a problem.

Mrs. Rector said so basically it is saying they exempt a church the same as we do governmental buildings, schools and agriculture buildings; they would be exempt from zoning.

Attorney Doll said that would address the issue until they have a Bible Study question.

Mrs. Rector said so this is something they are thinking about – they don't want her to change the ordinance yet.

Attorney Doll said he doesn't want anyone to leave this room thinking that he thinks this Board is anti-church or religion in any way shape or form or has ever in the past inappropriately behaved involving a church. He said it is his duty to keep them out of harm's way and he is worried there is a growing trend of lawsuits against local units of government under this Federal Law.

Mrs. Rector asked about exempting a church that has a school in it where people pay to have their child attend.

Attorney Doll said it is called a Religious Land Use and so if the school is a denominational school of that church he would think that would qualify under the Federal Act. He said they can discuss this further at the next meeting and he can even bring them copies of the Federal Law and news articles.

OTHER BUSINESS:

Guy Gentry asked about an update on the Wolfe property.

Mrs. Rector stated the County Highway Department went to both properties. She said the Jamestown Drive property was cleaned up and didn't need anything done. She said the Lincoln Avenue property took three men and three dump trucks ten hours. She said Decker Wrecker towed the vehicles and she was informed by Mr. Decker that he won't charge the County for his services when it is Court Ordered or ordered by the police. She said he told her that he will apply for title to the vehicle and they inform the owner they have ten days to redeem the vehicle or they take ownership.

Discussion ensued over the cost of the cleanup.

ATTORNEY BUSINESS:

None.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector said in regards to the house that burned down off Lincoln Avenue, the County Commissioners passed a Resolution that it be forwarded to the Plan Commission and the Board of Zoning Appeals to try and take some action to get it cleaned up. She said an adjacent land owner came in and filed a complaint and then came back days later and said thank you for getting it cleaned up. She said the cleanup was done by the insurance company because they hired a company to clean it up and board up the house so there is nothing harmful to anyone right now. She said she spoke with the insurance company who said they are still investigating it and making a decision in the middle of March and they could possibly pay for having the house removed even if it is a criminal case. She said State Farm Insurance will still remove the house in some instances but they have to look at everything. She said they don't even know yet if the police have released it or not. She said the Commissioners ruled today to have the resolution placed on the April Agenda and go from there.

Guy Gentry said there was a good article in the Sunday paper regarding the cost of cleanup on these meth house fires and how hazardous it is.

Being no other business the meeting adjourned at 8:45 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director